IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.21 OF 2005
IN
SECOND APPEAL 556 OF 2003.

1. Mr.Dattaraya Ganpat Bhuruk

2. Mr.Dilip Arjun Bhuruk

3. Ashok Arjun Bhuruk

All residing at Mutkewadi
(Chakan)
Tal. Rajgurunagar
Dist. Solapur ..Applicants
(Orig. Appellants)

versus

Shri Laxman Balaji Medankar
res. at Medankarwadi
of Chakan, Tal. Khed,
Dist. Pune ..Respondent.

Mr.A.V.Anturkar with Mr.V.B.Tapkir for the Applicant

Mr.V.G.Muzumdar for the Respondent

Coram : S.R.Sathe, J.
Dated : 20th November, 2006

JUDGMENT.

1. Applicants, the original defendants in regular Civil Suit No.117 of 1983 have preferred this review application and prayed for review of the order passed by this Court in Second Appeal No.556 of 2003 whereby the second appeal filed by them was dismissed in limine.

2. Brief facts giving rise to this application are as under:

. On 18.8.1975 the original defendants Dattatraya, Bharat and Others executed an agreement to sale of the suit land in favour of Laxman Medankar (the original plaintiff) and agreed to sale the said land for Rs.8000/- by accepting the earnest money of Rs.7500/-. The plaintiff was also put in actual possession of the suit land on the date of the agreement to sale. As per the terms and conditions of the agreement both the parties were to file application and seek permission for sale transaction from the concerned authority. The owners, original defendant did not file any such application, on the contrary they started obstructing the plaintiffs possession of the suit land. Plaintiff, therefore, filed regular Civil Suit No.117 of 1983, simplicitor for injunction.

3. The said suit was strongly opposed and defendants filed counter claim stating therein that the plaintiffs did not file suit for specific performance and their remedy in that behalf is

barred by law of limitation and as such they be directed to return the possession. The learned trial Judge dismissed the plaintiffs suit and decreed the counter claim in favour of the defendants.

4. Being aggrieved by the said order, the original plaintiff Laxman Medankar filed Civil Appeal No.535 of 1998 and the 6th Additional District Judge, Pune allowed the appeal and held that plaintiff was infact ready and willing to perform his part of contract and that he had received possession as per the provisions of Section 53A of the transfer of Property Act and hence he is entitled to protect the said possession. Naturally, he passed decree for permanent injunction in favour of the plaintiff and rejected the counter claim of the defendants.

5. Being aggrieved by the said order defendants filed the Second Appeal. However, after hearing both the learned Advocates, this Court came to the conclusion that no Substantial Question of Law is involved in the matter and as such dismissed the suit in limine.

6. The appellants in the second appeal i.e. the original defendants have filed the present application and prayed for review of the order passed in the second appeal whereby the appeal is dismissed in limine. Shri Anturkar learned Advocate for the original defendants submitted that for getting protection under Section 53A of the Transfer of Property Act 1882, it was necessary for the original plaintiffs-the transferee to show that they have done some act in furtherance of the contract as observed by the Apex Court in a case Shrimant Suryavanshi vs. Pralhad Suryavanshi (2002) 3 SCC 676. The proposition in the above cited ruling is not disputed and cannot be disputed. However, the above cited ruling is of no use to the present defendants because admittedly the defendants have handed over the possession to plaintiff under the Agreement to Sale and this fact is admitted even by the defendants. Not only that, but in pursuance of the said agreement to sale and having received the possession under it the transferee-plaintiff took further necessary steps and got his name entered in the record of right as cultivator of the land. Though defendant preferred appeal against the same,

the same was also rejected. So, it cannot be said that after the execution of the agreement to sale, the plaintiffs have not taken any steps.

7. Merely because plaintiff did not file the suit for specific purpose within the period of limitation, protection under Section 53A of the Transfer of Property Act cannot be rejected to him. This has been so held in the above cited ruling. What is more to be noted is that in the instant case out of the total consideration of Rs.8000/-, Rs.7500/- were already paid by the plaintiffs to the defendants. So, there was in fact nothing to be done by the plaintiffs. Admittedly, the sale deed could not have been executed unless the permission from the concerned authority was secured. It is not the case of even the defendants that the plaintiff was not ready to make any application to the concerned authority or that he refused to give his signature for such application. We do find that after receiving the possession of the suit land the plaintiffs cultivated it and as they had received possession in pursuance of part performance of agreement, so considering all these aspects it cannot be said that the plaintiffs-transferees had

not done any act in furtherence of the contract and as such there is no necessity to review the order passed by this Court.

8. Taking into consideration the facts and circumstances of the case as well as the order passed in the second appeal, there is nothing to indicate that there is any mistake or error apparent on the face of the record or that there is any error of law in passing the order in the second appeal. The applicants have failed to make out a case for review as contemplated under Order XLVII of the Code of Civil Procedure. There is no substance in this application. Hence, application is rejected.

(S.R.Sathe, J.)